

## APPEAL NO. 010697

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was commenced on January 24 and concluded on February 16, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and that he had disability resulting therefrom September 25 and 26, 2000. The claimant only appeals, on sufficiency grounds, the hearing officer's determination of the length of his period of disability. The respondent (carrier) responds and urges affirmance of the hearing officer's decision and order in all respects.

### DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's period of disability was September 25 to 26, 2000. Section 401.011(16) of the 1989 Act defines disability as the claimant's inability, because of a compensable injury, to obtain and retain employment at wages equivalent to those earned preinjury. Evidence in the record supporting the hearing officer's decision includes a medical work-release form showing the claimant as having disability on only September 25 and 26, 2000. Furthermore, the hearing officer could infer from the documentary evidence that the claimant retired from his position on or about September 28, 2000, and thereafter did not work because of his retirement. The claimant did not testify or present evidence that he was unable to obtain or retain employment at his preinjury wages following his retirement.

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge